

# **Reference: RGL 83-06**

## **Subject: ENDANGERED SPECIES**

### **Title: ENDANGERED SPECIES ACT - REGULATORY PROGRAM**

**Issued: 05/17/83      Expires: 12/31/85**

**Originator: DAEN-CWO-N**

### **Description: SPECIFIES PROCEDURES FOR COMPLYING WITH SECTION 7 OF THE ENDANGERED SPECIES ACT.**

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1. The purpose of this guidance is to clarify certain Endangered Species Act (ESA) requirements as they relate to Corps regulatory responsibilities. For additional requirements or clarification the ESA should be consulted.
  2. Biological Assessment: If the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) (as appropriate) advises, based on the best scientific and commercial data available, that such species may be present, the district engineer will conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by issuance of the permit. The environmental assessment or environmental impact statement may be used as the biological assessment. (See Section 7(c) of the ESA).
  3. Consultation: District engineers must initiate consultation pursuant to Section 7 of the Endangered Species Act if an activity for which a Corps permit has been requested will likely affect any listed species or habitat determined to be critical by the USFWS or NMFS. Moreover, district engineers must initiate Section 7 consultation if requested to do so by the USFWS or NMFS. (See Section 7(a) and (b) of the ESA). For species proposed to be listed, see Section 7(a)(4) of the ESA.
  4. Biological Opinion: The biological opinion is prepared by the USFWS or NMFS and sets forth its opinion and a summary of the information on which the opinion is based, detailing how issuance of the permit would affect the species or its critical habitat. The USFWS or NMFS will suggest those reasonable and prudent alternatives which it believes would avoid jeopardizing the continued existence of the species or adversely modifying its critical habitat. (See Section 7(b) of the ESA).
  5. Jeopardy Determination: If Section 7 consultation is initiated, then either the USFWS or NMFS is required to furnish the district engineer with a biological opinion. Based on this opinion and other information in the record, the district engineer will determine if the activity for which a permit has been requested would be likely to jeopardize the

continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. In making this determination, the district engineer must give great weight to the biological opinion. The record must clearly document the reasons for the district engineer's decision.

6. If the district engineer determines that the permitted activity is likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species, then he must deny the permit. If this situation occurs, the district engineer must indicate if he is denying primarily for endangered species reasons or because the activity is not in the public interest. This is important because, if the permit is denied because it is not in the public interest (rather than primarily for endangered species reasons), then the applicant cannot seek an exemption from the Endangered Species Committee as provided for under the Endangered Species Act.

FOR THE COMMANDER: